



## TSA SCREENING PROCEDURES: A THREAT TO PRIVACY

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The purpose of this research was to shed light on the privacy issues currently existing in airport screening procedures. This paper focuses on investigating the different screening technologies and techniques used by the Transportation Security Administration (TSA), and identifying how they may represent a threat to the privacy of the public. First, this work presents a historical overview of the development of airport screening, indicating the events that have revolutionized the security systems used today. Second, it describe and define the most commonly screening procedures used today by the TSA, explaining how they conflict with passenger's privacy. We focus our investigation on current events that have been reported to violate the passenger's rights and they dignity.

A situation that has raised great concern about the ethical decisions of the Transportation Security Officers (TSO) is their tendency to profile and abuse their authority during screening procedures. Minorities, such as individuals of Southern Asian heritage are the most affected by this behavior. They are often subjected to invasive and humiliating secondary screening procedures only based on prejudice raised by society.

The increasing harassment complaints against TSO have resulted as a consequence of their great access to private information. Females are the most affected by this circumstance, often receiving inappropriate comments from screeners, and are often requested to go through the procedure more than once for no apparent reason.

**Keywords:** Ethics, Dignity, Passenger screening process, TSA, TSO, AIT.

### **Introduction**

#### *Historic Background of Current Screening Procedures*

Between mid-1960 and early-1970, hijacking of domestic and international aircraft was at its peak, the Department of Transportation (DoT) recorded 364 hijacking. As a result, threats to security have gained the attention of passengers, and called for the creation of government regulation. Before the TSA was organized in 2001, two major events led to the development of airline passenger screening. Beginning in the late 1960's, as a result of the first hijacking of U.S commercial airliner near Key West Florida directed to Cuba, the Federal Aviation Administration (FAA) established the first Anti-Hijacking Program (Birkland, 2004). The other incident was the bombing of Pan Am Flight 103, which led to the creation of the *Presidents Commission on Airline Security*, and the implementation of new regulations created by the commission in the Aviation Security Improvement Act of 1990 (Murphy, 2001).

Before the September 11 attacks, passenger screening was delegated to the commercial air carriers, operating at any given airport according to FAR Part 108. Carriers normally subcontracted private security firms to take on the responsibility of detecting and countering any threats. The employees of these private contractors were over worked, under paid, low levels of training, and showed low performance quality, at times passengers were not even screened and as a result many prohibited items were brought onboard (William, 1988). The negligence of this subcontracted security officers would later play an important role in the attacks of September 11, 2001.

### *September 11, 2001, 9/11- Birth of TSA*

On September 11, 2001 the United States experienced a dramatic catastrophe, which resulted in the evolution of aviation. The event could be described in the following manner; members of the Al-Qaida terrorist organization led by Osama Bin Laden, hijacked and seized four commercial aircraft. The terrorists used the aircraft as directed missiles, crashing them into buildings of great significance to the United States. September 11, consisted of four cross- country flights: one out of Newark Liberty International Airport, one out of Washington Dulles International Airport, and two out of Boston Logan International Airport; one of the aircraft crashed into the Pentagon, two into the World Trade Center, and the final aircraft crashed in a field in Pennsylvania (attempting to reach the White House) as a result of passenger rising against hijackers (Birkland, 2004).

With the result of September 11, United States Congress and President Bush signed the Aviation and Transportation Security Act (ATSA), establishing TSA (Frederickson, & LaPorte 2002). TSA is now accountable for all passengers and baggage screening, functions that were a responsibility of commercial air carriers. As mentioned earlier, before the TSA was created, airlines contracted out passenger and baggage screening to firms that paid very low insufficient salary wages, and required minimal or no qualifications.

The purpose of this research was to shed light on the privacy issues currently existing in airport screening procedures. This paper focuses on investigating the different screening technologies and techniques used by the TSA, and identifying how they may represent a threat to the privacy of the public. It is important to understand the responsibility of the TSA, but it is equally important to understand the civil rights of all passengers alike. This research present information on many cases where the TSA has cross that fine line between national security and respect to human dignity. The research highlights some recommendations that will make security a priority for all travelers with respect to human dignity.

## **Literature Review**

### *Passenger Screening after September 11, 2001*

TSA has hired over 55,000 TSO at 420 commercial service airports across the country and trained their new staff under strict implemented procedures (Frederickson, & LaPorte, 2002). Regulations regarding the security of civil aviation airports are published under Title 49-of the Code of Federal Regulation (CFR), known as Transportation Security Regulation (TSR). The TSR designates specific areas of the airport that are subjected to various levels of security such as: air operations areas, secure areas, sterile areas, Security Identification Display Area (SIDA), and exclusive areas (Frederickson, & LaPorte 2002). The FAA retains control of all airside movement, including the arrival and departure of aircraft.

Under the TSA, passenger-screening facilities include an automated screening process, which is conducted by a magnetometer. When passing through TSA security; passenger's walk through the magnetometer, the presence of metal in a passenger is detected, based on the sensitivity setting, if an appropriate amount of metal is detected the alarm is triggered in the machine (George & Whatford, 2007). Passengers who trigger the alarm are subjected to manual search, also known as secondary screening, by a TSO of the same gender.

### *Events that Led to the Development of New Screening Technologies*

Three months after the horrific events of September 11, on a flight from Paris to Miami, Richard Reid, known as the *shoe bomber*, attempted to ignite an explosive device hidden in his shoes. The outcome of this event led to a new screening procedure for TSOs; passengers are to remove their shoes and pass them through an x-ray machine before walking through the magnetometer. In August 2006, British officials prevented a terrorist plot to destroy an aircraft from the United Kingdom to the United States, with liquid explosives hidden inside their carry-on equipment. The result of this attempt led to the creation of the TSA 3-1-1 liquid rule, a ban on all liquids, gels, and aerosols, only a certain level of 3-ounces can be accepted. In Christmas 2009, Umar Faruk Abdulmutallab attempted to detonate a plastic explosive device concealed in his underwear, also known as the *Christmas underwear bomber* (Mitchener-Nissen, Bowers, & Chetty, 2012).

Fortunately, TSA cannot force us to remove our clothes in public. As a consequence of these incidents and other minor attempts, TSA and the Department of Homeland Security (DHS) created new security regulations for all international and domestic flights directing to and from the United States. In late November 2010, TSA launched a new pat-down procedure to detect any hidden and dangerous items such as explosives (explained further in the article).

With all these new procedures and techniques, passenger screening became a time-consuming problem; passengers would miss their flights because of the long screening lines. In late December 2010, TSA deployed 500 complete new screening units of Advanced Imaging Technology (AIT). AIT represented the most advanced and less time-consuming unit to safely screen passengers for metallic and non-metallic threats including weapons, explosives and other objects concealed under layers of clothing without physical contact. Although this technology represented a solution for the immediate problem, it raised many privacy concerns among the passengers.

### *Ethical Issues with Advanced Imaging Technology (AIT)*

A full-body scanner is a unit that creates a perspective image of a person's nude body, with the attempt to detect any concealed weapons without physically removing their clothes or making any physical contact (Laskey M., 2010; Dictionary, 2006). TSA AIT units began testing in 2007 and by 2013 they were installed in about 200 U.S. airports (Sanders & Cantor, 2012). According to the Joint Written Testimony, TSA installed two different types of AIT devices: millimeter wave and general-use backscatter x-ray.

TSA's work with screening units has been highly criticized by the travelers. A recent article in the San Diego Entertainer assures that the images produced by these devices are detailed enough that it would be easy to distinguish a person's gender, or to observe if a lady is on her menstrual cycle or not (Bhatt, 2010). The fact that an officer is watching the nude body of the passengers has created several controversies which have been spread through the media and have raised different opinions among security experts. Even though this organization ensures that the images and information is never saved and is only for security purposes, some cases proved all the opposite. An example of this was the case of the Officer Rolando Negrin, TSO who was ridiculed by his colleague's on behalf of the size of his genitals after being imaged by an AIT unit. Eventually, according to the Miami-Dade Police Department report, this joke made Negrin conduct an unethical behavior by beating his co-worker with a baton and demanding an apology after getting teased (Schapiro, 2010). One of the biggest problems with this situation is that the nude pictures of the passengers are managed by a large number of staff and this could represent a dignity risk if their system is not secured enough. If images like this were exposed, nothing guarantees that they are not already leaked all over the internet or that someday will appear on the tabloids in cases involving celebrities.

Among other issues raised about the misuse of this unit it could be highlighted the complaints of many people, especially women. Those females state feeling harassed by TSO who demand them to be screened several times. An example of this situation was the case of Ellen Terrell, who was flying out of Dallas Fort Worth International Airport, expressed a feeling of harassment when being asked to go

through the full-body scanner three times. Mrs. Terrell expressed to CBS News in Dallas that she felt totally exposed after she was asked if she played tennis due to her physical appearance, the remark was made in an inappropriate manner, and the screener had seen her figure various times through the AIT unit.

CBS Dallas ensure to have a record of hundreds of complaint in which women like Ellen expressed a feeling of harassment by the TSO, and also accused this institution of unprofessionalism when they were requested to go through the AIT unit more than one time. They expressed this was due to their attractive physical appearance and not to some security threat in their images (Allen, 2012).

Despite that TSA ensure that they do not profile passenger, cases like these show all the contrary to their words. It is clear that these women have felt, at some point, harassed by the screening process, this a heavy example of privacy violation and disrespect to passengers dignity.

The dissatisfaction level within the TSA workers were clearly presented in the results of a survey conducted by Frequent Flyers Magazine, in which 1,852 people were interviewed, in partnership with Flyer Talk, an online travel community. According to the outcome of this survey a fifty-six percent stated they were not satisfied and a eighteen percent said they were either satisfied, very satisfied, or extremely satisfied with that experience (Collins, 2012) (See Appendix I). The alarming conclusion of the work done by this magazine shows how unsatisfying and unacceptable the TSA screening process has become for the passengers among the US airports.

Now, after more than five years of complaints and dissatisfaction, the TSA has decided to take out the controversial units and replace them with a less invasive machines. The great number of unsatisfied passengers has forced TSA to remove most the first scanners which used to produce the nude images. Despite the knowledge of this information since the very beginning, nothing was done to avoid this kind of privacy invasion until the public realized how these units really worked. Until then, some flyers are going to be exposed to these *naked machines*. If a passenger refuses to proceed through an AIT or magnetometer, then secondary screening is conducted.

### *Ethical Issues with Secondary Screening*

Another frequently criticized airport screening procedures is secondary screening, most commonly known as pat-downs. This procedure involves physical contact between the TSO and the passengers, and therefore it may lead to an uncomfortable circumstances. According to TSA, this type of screening is mainly used under two circumstances, if a passenger cannot or decides not to be screened by AIT equipment and to clarify any possible threats identified by the screening equipment ("Pat-downs," 2013). While it is true that this screening procedures are mostly carried out in the best interest of the public, numerous cases of unnecessary and intrusive pat-downs have been reported in recent years.

During 2011 the pat-down procedure was modified, becoming even more hostile than before. The main differences between the new process and the previous is that TSA officials are now required to use the front part of their hands to conduct a more thorough inspection, also a more exhaustive inspection of sensitive areas is required. Secondary screening usually involves contact with the passenger's genitalia and buttocks area, increasing the amount of stress and discomfort experienced by the subject.

It is important to note that passengers should be made fully aware of their rights before a pat-down. According to TSA, passengers are entitled to the following privileges at the moment of a pat-down ("Pat-downs," 2013):

- The pat-down should be conducted by an officer of the same gender. Sometimes, passengers must wait for an officer of the same gender to become available.
- The passenger can request a private screening at any time and a private screening should be offered when the officer must pat-down sensitive areas. During a private screening, another TSA employee will also be present and the passenger may be accompanied by a companion of his or her choosing.
- A passenger may ask for a chair if he or she needs to sit down.

- A passenger should inform an officer before the pat-down begins of any difficulty raising his or her arms, remaining in the position required for a pat-down, or any areas of the body that are painful when touched.
- A passenger should not be asked to remove or lift any article of clothing to reveal a sensitive body area.

Although accommodations are provided for passengers to make the experience more humane, they do not prevent pat-downs from being often discriminatory in nature and unnecessary.

One of the key difficulties in conducting secondary screening is choosing the subject in an impartial manner. TSA agents face a common ethical dilemma, since racial prejudice is often the difference between being scrutinized or not. In his work, *The Bin Laden Exception*, Law Professor Erik Luna describes the case in which TSA officers at Boston's Logan International Airport were profiling passengers based on their race or ethnicity, claiming that there is a higher probability of minorities being involved in criminal activities such as drug smuggling and violations of immigration laws among other transgressions (Luna, 2012). This is just one of many cases that generate great concern amidst the traveling public; ethnicity, gender or religion are often used against passengers as a motive to subject them to inspection and invasive procedures such as pat-downs.

After 9/11, society associates terrorism with a specific ethnic group, Southern Asian heritage, due to the ethnic and religious resemblances they share with the perpetrators of this attacks. Individuals within this ethnic group are often subjected to invasive and humiliating inspections that are simply based on prejudice. While the fourth amendment clearly requires the support of probable cause before any searches or seizures are conducted, TSA employees often take advantage of the flexibility of the fourth amendment in the area of airport security to discriminate against passengers. In 2002, a Pakistani girl was humiliated by National Guard troops at Chicago O'Hare Airport, by strip-searching her based on stereotypical evidence (Chandrasekhar, 2003). This is simply a reflection of abuse of power and discrimination.

Profiling has become a very controversial topic, while many advocate for the protection of minorities, a great number of people favor the use of racial profiling. USA Today /Gallup poll reflect a very interesting tendency in the American population's approach towards racial profiling. Fully 60 percent approve profiling against people of Muslim heritage at airports, even those who are American Citizens (Jadallah & el-Khoury, 2010). Due to the escalation of the racial profiling conflict, TSA and other federal organizations have been forced to share their opinion on the subject, publicly rejecting racial profiling within their screening methods, but their practices often contradict their statements.

Profiling is not the only discriminatory motive for being subjected to secondary screening, often physical impairments or health conditions can lead to invasive and stressful searches. Prosthetic limbs and other medical equipment regularly raise red flags when passing through scanning equipment, and travelers are often subjected to further scrutiny. Some examples of this kind of event are the cases of a sixty-one-year-old cancer patient who was subjected to an invasive secondary screening procedure in which his urostomy bag broke, leaving him covered in urine. Other troubling stories include an eight-month-old baby patted-down by a TSO and a woman of advanced age whose adult diaper was removed in search of a threat (Luna, 2012). These are events that clearly expose violations of privacy and cause great indignation.

Due to the large amount of complaints and confrontation generated by TSA's controversial screening procedures, new alternatives are in development. TSA recently launched TSA Pre✓™, a program that allows participants to avoid certain screening procedures. Participants use separate screening lanes in which they will be able to keep their shoes on as well as light outerwear and belts, passengers will also be able to leave their laptops and prohibited liquids in their carryon luggage ("TSA pre✓™," 2013). Such programs are initiatives that make flying much friendlier to the public, and avoid violations to human dignity. Through the use of new technology, and searches on people's backgrounds, it is possible to become more flexible with the flying public.

## Conclusion

Aviation security has evolved greatly due to the increased use of aviation as means of terror and criminal activity. The Federal Government along with leaders of the aviation industry have responded to terrorism with the implementation of new screening procedures and technology that help identify threats. Although this procedures have been implemented to protect the public, a high price has been paid by the passengers. The new screening technologies and procedures have become a menace to the privacy and dignity of the public. Developments, such as Advanced Imaging Technology, expose passenger to excessive scrutiny by revealing the intimacy of their bodies. The TSA has not only gained access to the most revealing details of the traveler's privacy, but also hands the responsibility of managing that information to often negligent personnel.

A situation that has also raised great concern about the ethical decisions of TSA officers is their tendency to profile and abuse their authority during screening procedures. Minorities, such as individuals of Southern Asian heritage are the most affected by this behavior. They are often subjected to invasive and humiliating secondary screening procedures only based on prejudice raised by society.

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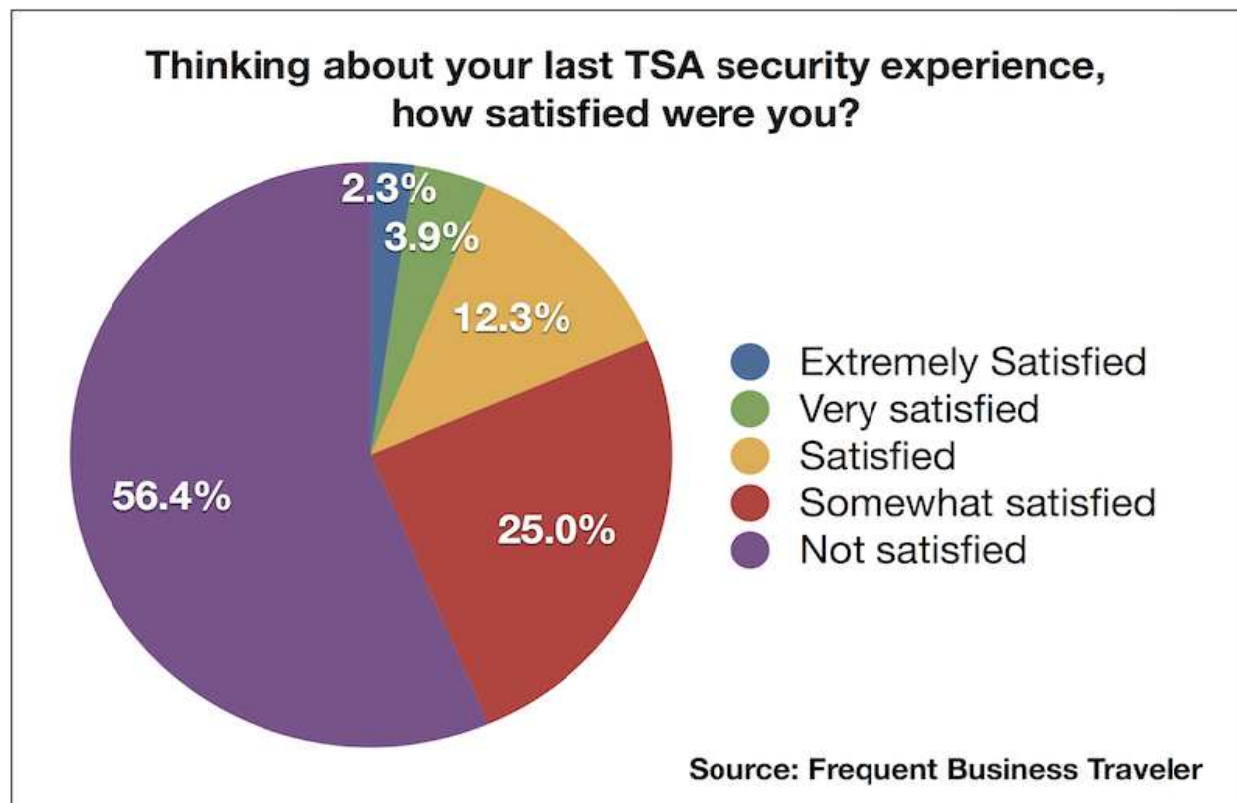
The public has voiced their concerns to the authorities, and as a consequences of the conflicts generated by current screening procedures this organization has been forced to become less invasive. AIT units have been modified to produce less revealing images, protecting passenger's privacy and dignity. TSA is also developing program such as TSA pre✓™, which allow trusted travelers to avoid certain screening procedures. The aviation industry will soon reach a balance between regulation and privacy.

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## Appendix I



(Spira, 2012)